

1 SB15
2 105290-1
3 By Senator Glover
4 RFD: Judiciary
5 First Read: 03-FEB-09
6 PFD: 12/05/2008

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8 SYNOPSIS: Under existing law, the crime of eluding
9 police is an unclassified misdemeanor offense.

10 This bill would provide a two-tiered level
11 of crime for eluding a law enforcement officer,
12 including a Class C felony offense for serious
13 violations. This bill would provide a mechanism for
14 law enforcement officers to issue violations to
15 owners of vehicles used for eluding when the
16 officer has a vehicle tag number.

17 The bill would also provide for the
18 revocation of the driver's license of persons
19 convicted of a felony offense of eluding a law
20 enforcement officer.

21 Amendment 621 of the Constitution of Alabama
22 of 1901 prohibits a general law whose purpose or
23 effect would be to require a new or increased
24 expenditure of local funds from becoming effective
25 with regard to a local governmental entity without
26 enactment by a 2/3 vote unless: it comes within one
27 of a number of specified exceptions; it is approved

1 by the affected entity; or the Legislature
2 appropriates funds, or provides a local source of
3 revenue, to the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of Amendment 621. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in Amendment 621.

11
12 A BILL

13 TO BE ENTITLED

14 AN ACT
15

16 To amend Sections 32-5A-193 and 32-5A-195 of the
17 Code of Alabama 1975, relating to eluding a law enforcement
18 officer; to provide a two-tiered level of crime for eluding a
19 law enforcement officer; to provide for law enforcement
20 officers to issue violations to owners of vehicles used for
21 eluding; and in connection therewith would have as its purpose
22 or effect the requirement of a new or increased expenditure of
23 local funds within the meaning of Amendment 621 of the
24 Constitution of Alabama of 1901.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 32-5A-193 and 32-5A-195 of the
27 Code of Alabama 1975, are amended to read as follows:

1 "§32-5A-193.

2 "(a) Any driver of a motor vehicle who willfully
3 fails or refuses to bring ~~his~~ the vehicle to a stop, or who
4 otherwise flees or attempts to elude a pursuing ~~police~~ law
5 enforcement vehicle, when given a visual or audible signal to
6 bring the vehicle to a stop, or who attempts to flee or evade
7 a law enforcement officer using a motor vehicle in an attempt
8 to flee from the enforcement of a traffic violation or other
9 law enforcement action, or any person who flees a law
10 enforcement officer on foot or otherwise when given a visual
11 or audible signal to stop shall be guilty of ~~a misdemeanor.~~
12 ~~The signal given by the police officer may be by hand, voice,~~
13 ~~emergency light or siren~~ eluding a law enforcement officer in
14 the second degree. Eluding a law enforcement officer in the
15 second degree is a Class A misdemeanor.

16 ~~"(b) Every person convicted of fleeing or attempting~~
17 ~~to elude a police officer shall be punished by imprisonment~~
18 ~~for not less than 30 days nor more than six months or by a~~
19 ~~fine of not less than \$100.00 nor more than \$500.00, or by~~
20 ~~both such fine and imprisonment. Any driver who violates~~
21 subsection (a) and does any of the following shall be guilty
22 of eluding a law enforcement officer in the first degree,
23 which is a Class C felony:

24 "(1) Drives in excess of 15 miles per hour above the
25 speed limit.

26 "(2) Drives in a manner which demonstrates a
27 reckless disregard for the safety of persons or property.

1 "(3) Flees a law enforcement officer with an
2 innocent passenger in the vehicle.

3 "(4) Commits more than three traffic violations
4 during the pursuit.

5 "(5) Commits a felony prior to or during the
6 pursuit.

7 "(6) Causes damage to the property of another in
8 excess of five hundred dollars (\$500) or bodily injury to
9 another.

10 "(7) Is under the influence of alcohol or any other
11 substance or combination of substances in violation of Section
12 32-5A-191.

13 "(8) Leaves the scene of an accident in violation of
14 Section 32-10-1 or Section 32-10-2.

15 "(c) The signal to stop given by the law enforcement
16 officer may be by hand, voice, emergency light, or siren. The
17 officer giving the signal shall be in uniform, prominently
18 displaying a badge of office, and the vehicle shall be
19 appropriately marked to show that the vehicle is an official
20 law enforcement vehicle.

21 "(d) The court shall notify the Director of Public
22 Safety of any conviction under this section within 10 days
23 after sentencing. Upon conviction of eluding a law enforcement
24 officer in the first degree, the court shall require the
25 surrender of the driver's license of the offender and the
26 court shall forward the license with the record of conviction
27 to the director.

1 "(e) Any law enforcement officer who engages in the
2 pursuit of a person or persons suspected of violation of this
3 section shall be entitled to immunity under Section 6-5-338.

4 "(f) A traffic citation may be issued against the
5 owner of a motor vehicle who has knowledge or should have
6 knowledge that the vehicle may be used in the crime of eluding
7 if a law enforcement officer observes the vehicle used for the
8 violation of subsection (a) or (b), records a detailed
9 description and license plate number of the vehicle, and does
10 not pursue or is not able to stop the driver for the offense.
11 The officer who observes a violation shall submit an affidavit
12 against the owner to the appropriate court which shall include
13 a description of the motor vehicle, the license plate number,
14 and the state of issuance of the license plate. Upon approval
15 by the court, a summons shall be issued against the owner of
16 the vehicle which shall be forwarded by personal service or
17 first-class mail to the address given on the motor vehicle
18 registration. The summons shall clearly state a description of
19 the eluding offense. The owner may be fined an amount, fixed
20 by the court, not to exceed two hundred dollars (\$200) or be
21 sentenced to not more than 30 days in jail, or by both fine
22 and imprisonment.

23 "§32-5A-195.

24 "(a) The Director of Public Safety is hereby
25 authorized to ~~may~~ cancel any driver's license upon determining
26 that the licensee was not entitled to the issuance thereof
27 hereunder or that ~~said~~ the licensee failed to give the correct

1 or required information in his or her application. Upon ~~such~~
2 ~~the~~ cancellation, the licensee ~~must~~ shall surrender the
3 cancelled license ~~so cancelled~~. If ~~such~~ the licensee refuses
4 to surrender ~~such~~ the license, he or she shall be guilty of a
5 misdemeanor.

6 "(b) The privilege of driving a motor vehicle on the
7 highways of this state given to a nonresident hereunder shall
8 be subject to suspension or revocation by the Director of
9 Public Safety in like manner and for like cause as a driver's
10 license issued hereunder may be suspended or revoked.

11 (c) The ~~Director of Public Safety is further~~
12 ~~authorized~~ director, upon receiving a record of the conviction
13 in this state of a nonresident driver of a motor vehicle of
14 any offense, ~~to~~ may forward a certified copy of ~~such~~ the
15 record to the motor vehicle administrator in the state wherein
16 the person so convicted is a resident.

17 "(d) When a nonresident's operating privilege is
18 suspended or revoked, the ~~Director of Public Safety~~ director
19 shall forward a certified copy of the record of ~~such~~ the
20 action to the motor vehicle administrator in the state wherein
21 ~~such~~ the person resides.

22 "(e) The ~~Director of Public Safety is authorized to~~
23 director may suspend or revoke the license of any resident of
24 this state or the privilege of a nonresident to drive a motor
25 vehicle in this state upon receiving notice of the conviction
26 of ~~such~~ the person in another state of any offense therein

1 which, if committed in this state, would be grounds for the
2 suspension or revocation of the license of a driver.

3 "(f) The ~~Director of Public Safety~~ director may give
4 such effect to conduct of a resident in another state as is
5 provided by the laws of this state had ~~such~~ the conduct
6 occurred in this state.

7 "(g) Whenever any person is convicted of any offense
8 for which this chapter makes mandatory the revocation of the
9 license of ~~such~~ the person by the department, the court in
10 which ~~such~~ the conviction is had shall require the surrender
11 to ~~it~~ the court of any driver's license then held by the
12 person convicted and the court shall thereupon forward the
13 ~~same driver's license~~ together with a record of ~~such~~ the
14 conviction to the ~~Director of Public Safety~~ director.

15 "(h) Every court having jurisdiction over offenses
16 committed under this article or any other law of this state or
17 municipal ordinance adopted by a local authority regulating
18 the operation of motor vehicles on highways, shall forward to
19 the ~~Director of Public Safety~~ director within 10 days a record
20 of the conviction of any person in ~~said~~ the court for a
21 violation of any ~~said~~ laws other than regulations governing
22 standing or parking, and may recommend the suspension of the
23 driver's license of the person so convicted.

24 "(i) For the purposes of this article, the term
25 "conviction" shall mean a final conviction. Also, for the
26 purposes of this article, an unvacated forfeiture of bail or
27 collateral deposited to secure a defendant's appearance in

1 court, a plea of nolo contendere accepted by the court, the
2 payment of a fine, a plea of guilty or a finding of guilt of a
3 traffic violation charge, shall be equivalent to a conviction
4 regardless of whether the penalty is rebated, suspended, or
5 probated.

6 "(j) The ~~Director of Public Safety~~ director shall
7 forthwith revoke the license of any driver upon receiving a
8 record of ~~such~~ the driver's conviction of any of the following
9 offenses:

10 "(1) Manslaughter or homicide by vehicle resulting
11 from the operation of a motor vehicle~~7.~~

12 "(2) Upon a first conviction of driving or being in
13 actual physical control of any vehicle while under the
14 influence of alcohol or under the influence of a controlled
15 substance to a degree which renders him or her incapable of
16 safely driving or under the combined influence of alcohol and
17 a controlled substance to a degree which renders him or her
18 incapable of safely driving, ~~such~~ the revocation shall take
19 place only when ordered by the court rendering ~~such~~
20 conviction~~7.~~

21 "(3) Upon a second or subsequent conviction within a
22 five-year period, of driving or being in actual physical
23 control of any vehicle while under the influence of alcohol or
24 under the influence of a controlled substance to a degree
25 which renders him or her incapable of safely driving or under
26 the combined influence of alcohol and a controlled substance

1 to a degree which renders him or her incapable of safely
2 driving~~7.~~

3 "(4) Any felony in the commission of which a motor
4 vehicle is used~~7.~~

5 "(5) Failure to stop, render aid, or identify
6 himself or herself as required under the laws of this state in
7 the event of a motor vehicle accident resulting in the death
8 or personal injury of another~~7.~~

9 "(6) Perjury or the making of a false affidavit or
10 statement under oath to the ~~Director of Public Safety~~ director
11 under this article or under any other law relating to the
12 ownership or operation of motor vehicles~~7.~~

13 "(7) Conviction upon three charges of reckless
14 driving committed within a period of ~~12 months~~, five years.

15 "(8) Unauthorized use of a motor vehicle belonging
16 to another which act does not amount to a felony.

17 "(9) Eluding a law enforcement officer in the first
18 degree. Upon conviction the director shall revoke the driver's
19 license of the person convicted for a period of one year
20 unless the person has a prior misdemeanor or felony conviction
21 under Section 32-5A-193, in which case the director shall
22 revoke all driving privileges of the convicted person for a
23 period of five years.

24 "(k) The ~~Director of Public Safety~~ is hereby
25 ~~authorized to~~ director may suspend the license of a driver
26 without preliminary hearing upon a showing by its records or
27 other sufficient evidence that the licensee:

1 "(1) Has committed an offense for which mandatory
2 revocation of license is required upon conviction~~7.~~

3 "(2) Has been convicted with such frequency of
4 serious offenses against traffic regulations governing the
5 movement of vehicles as to indicate a disrespect for traffic
6 laws and a disregard for the safety of other persons on the
7 highways~~7.~~

8 "(3) Is an habitually reckless or negligent driver
9 of a motor vehicle, such fact being established by a record of
10 accidents, or by other evidence~~7.~~

11 "(4) Is incompetent to drive a motor vehicle~~7.~~

12 "(5) Has permitted an unlawful or fraudulent use of
13 such license~~7.~~

14 "(6) Has committed an offense in another state which
15 if committed in this state would be grounds for suspension or
16 revocation~~7.~~

17 "(7) Has been convicted of ~~fleeing or attempting to~~
18 ~~elude a police officer, or~~ eluding a law enforcement officer
19 in the second degree.

20 "(8) Has been convicted of racing on the highways.

21 "(1) Upon suspending the license of any person ~~as~~
22 ~~hereinbefore in pursuant to~~ this section ~~authorized,~~ the
23 ~~Director of Public Safety~~ director shall immediately notify
24 the licensee in writing and upon his or her request shall
25 afford him or her an opportunity for a hearing as early as
26 practicable, not to exceed 30 days after receipt of ~~such the~~
27 request in the county wherein the licensee resides unless the

1 ~~Director of Public Safety~~ director and the licensee agree that
2 ~~such~~ the hearing may be held in some other county. ~~Such~~ The
3 hearing shall be before the ~~Director of Public Safety~~ director
4 or his or her duly authorized agent. Upon such hearing, ~~the~~
5 ~~Director of Public Safety~~ director or his or her duly
6 authorized agent may administer oaths and may issue subpoenas
7 for the attendance of witnesses in the production of relevant
8 books and papers and may require a reexamination of the
9 licensee. Upon such hearing, ~~the~~ ~~Director of Public Safety~~
10 director or his or her duly authorized agent shall either
11 rescind its order of suspension or, good cause appearing
12 therefor, may continue, modify, ~~or~~ extend the suspension of
13 ~~such~~ the licensee or revoke ~~such~~ the license. If the license
14 has been suspended as a result of the licensee's driving while
15 under the influence of alcohol, the director or his or her
16 agent conducting the hearing shall take into account, among
17 other relevant factors, the licensee's successful completion
18 of any duly established "highway intoxication seminar," "DWI
19 counterattack course" or similar educational program designed
20 for problem drinking drivers. If the hearing is conducted by a
21 duly authorized agent instead of by the ~~Director of Public~~
22 ~~Safety himself~~ director, the action of ~~such~~ the agent ~~must~~
23 shall be approved by the ~~Director of Public Safety~~ director.

24 "(m) The ~~Director of Public Safety~~ director shall
25 not suspend a driver's license or privilege to drive a motor
26 vehicle upon the public highways for a period of more than one
27 year, except as permitted under Section 32-6-19.

1 "(n) At the end of the period of suspension a
2 license surrendered to the ~~Director of Public Safety~~ director
3 under subsection (o) shall be returned to the licensee.

4 "(o) The ~~Director of Public Safety~~ director upon
5 ~~cancelling~~ canceling, suspending, or revoking a license shall
6 require that ~~such~~ the license be surrendered to and be
7 retained by the ~~Director of Public Safety~~ director. Any person
8 whose license has been cancelled, suspended, or revoked shall
9 immediately return his or her license to the ~~Director of~~
10 ~~Public Safety~~ director. If ~~such~~ the licensee refuses to
11 surrender ~~such~~ his or her license, he or she shall be guilty
12 of a misdemeanor.

13 "(p) Any resident or nonresident whose driver's
14 license or privilege to operate a motor vehicle in this state
15 has been suspended or revoked as provided in this section
16 shall not operate a motor vehicle in this state under a
17 license or permit issued by any other jurisdiction or
18 otherwise during such suspension or after such revocation
19 until a new license is obtained when and as permitted under
20 this article.

21 "(q) Any person denied a license or whose license
22 has been cancelled, suspended, or revoked by the ~~Director of~~
23 ~~Public Safety~~ director except where such cancellation or
24 revocation is mandatory under ~~the provisions of~~ this article
25 shall have the right to file a petition within 30 days
26 thereafter for a hearing in the matter in the circuit court in
27 the county wherein ~~such person~~ he or she resides, or in the

1 case of cancellation, suspension, or revocation of a
2 nonresident's operating privilege in the county in which the
3 main office of the ~~Director of Public Safety~~ director is
4 located, and ~~such~~ the court is ~~hereby~~ vested with jurisdiction
5 and it shall be ~~its~~ the duty of the court to set the matter
6 for hearing upon 30 days' written notice to the ~~Director of~~
7 ~~Public Safety~~ director, and thereupon to take testimony and
8 examine into the facts of the case and to determine whether
9 the petitioner is entitled to a license or is subject to
10 suspension, cancellation, or revocation of license under the
11 provisions of this section."

12 Section 2. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621 because the
16 bill defines a new crime or amends the definition of an
17 existing crime.

18 Section 3. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.